

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BEN BEARCHUM JR.,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DEMO-99-0002
)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD
)
)
)
)
)
)
)

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 28, 2000. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Ben Bearchum Jr., appeared *pro se*. Respondent Department of Social and Health Services was represented by Colin Jackson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleged that Appellant failed to

1 conduct on-site placement visits, failed to complete required foster home health and safety reviews
2 and failed to maintain contact with a foster parent.

3
4 1.4 **Citations Discussed.** Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992);
5 Aquino v. University of Washington, PAB No. D93-163 (1995); Skaalheim v. Dep't of Social &
6 Health Services, PAB No. D93-053 (1994); Rainwater v. School for the Deaf, PAB No. D89-004
7 (1989); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Anane v.
8 Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston
9 Co. Super. Ct. Jan. 10, 1997); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119
10 (1987); WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

11 12 **II. FINDINGS OF FACT**

13 2.1 Appellant Ben Bearchum Jr. was a Social Worker 3 and permanent employee for
14 Respondent Department of Social and Health Services (DSHS) in the Tacoma Department of
15 Children and Family Services (DCFS) Office. Appellant and Respondent are subject to Chapters
16 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant
17 filed a timely appeal with the Personnel Appeals Board on January 11, 1999.

18
19 2.2 Appellant began his employment with the state in 1988, and he became an employee with
20 the Tacoma Division of Children and Family Services (DCFS), Child Protective Services, in May
21 1996.

22
23 2.3 By letter dated December 18, 1998, Dr. Jacob Romo, Regional Administrator for the
24 Division of Children and Family Services, informed Appellant of his demotion from his position as

1 a Social Worker 3 to a position as a Social Worker 1. Dr. Romo charged Appellant with neglect of
2 duty, inefficiency, insubordination, gross misconduct and willful violation of published employing
3 agency or department of personnel rules or regulations. Dr. Romo specifically alleged that
4 Appellant failed to conduct on-site placement visits, failed to complete required foster home health
5 and safety reviews, and failed to maintain contact with a foster parent with respect to two siblings
6 on his caseload.

7
8 2.4 Appellant's primary responsibility as a Social Worker 3 was to manage a caseload of Native
9 American children in foster care. His duties included supervising children in foster homes,
10 evaluating the needs of the children and their parents, meeting with foster parents, preparing service
11 plans, and representing the children's and the agency's interests in court.

12
13 2.5 The primary mission of the DCFS is to protect children and provide casework services to all
14 clients. DCFS Case Service Policy Manual requires social workers to have face-to-face contact
15 with the foster parents and foster children no less than once every 90 days, to provide case planning
16 with the parents of the children and other professionals involved in the case, to prepare permanent
17 plans for the children, and to provide casework support to assist foster parents regarding the care of
18 the children. DSHS Administrative Policy 6.04 requires employees to perform their duties and
19 responsibilities in a manner that maintains standards of behavior that promote public trust, faith and
20 confidence. Appellant was aware of and had received training on the DSHS and DCFS policies,
21 practices and case management.

22
23 2.6 Appellant's employment history with DSHS indicates he received the following disciplinary
24 and corrective actions:

- Letter of reprimand dated February 5, 1998 for failure to appear in court for a regularly scheduled case review;
- Letter of reprimand dated March 16, 1998, for failure to provide timely court reports and failure to have contact with an individual on his caseload;
- Letter of reprimand dated April 14, 1998, for arriving one half hour late for a court hearing;
- Letter of reprimand dated June 25, 1998, for failure to appear at work and failure to submit a leave request; and
- Letter dated August 21, 1998 imposing a 10-day suspension for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of agency policy for leaving a foster child on his caseload unattended at an airport for a period of three hours

2.7 On March 11, 1998, Janet Duris, Area Administrator, met with Appellant regarding problems with his case management. By memo March 16, 1998, Ms. Duris provided Appellant with a list of performance expectations which, in part, directed Appellant to have face-to-face visits with all children on his caseload in their foster homes at least once every 90 days and to document these visits.

2.8 In July 1998, Appellant received a 90-day special evaluation for the period from March 15, 1998 through June 15, 1998. Appellant failed to meet minimum requirements in the accomplishment of job requirement, job reliability, and personal relations, and he met minimum requirements under job knowledge and competence and communications skills. Appellant's supervisor specifically noted that Appellant failed to have contact with children and the foster parents on a consistent basis

2.9 In March 1997, siblings Andrea and Clinton were assigned to Appellant's caseload. The children had been placed in a foster home in January 1997.

1
2 2.10 On June 25, 1998, Theresa Elisoff, Appellant's supervisor, became aware that Appellant had
3 not made any on-site visits to the children's foster home. Ms. Elisoff spoke to the foster mother of
4 the children who voiced her concern that Appellant had not personally met with her since the
5 children were placed in her care. The foster mother informed Ms. Elisoff that Appellant on three
6 separate occasions did arrange to meet with her at her request, but he did not keep or call to cancel
7 the first meeting; he canceled the second meeting due to a family emergency; and he did not appear
8 for the third meeting which was scheduled for May 22, 1998. On May 22, 1998, the foster mother
9 attempted to contact Appellant, but Appellant did not return her call until May 29, 1998.

10
11 2.11 On July 2, 1998, Ms. Elisoff initiated a Personnel Conduct Report (PCR) against Appellant
12 regarding his failure to properly manage the cases for Andrea and Clinton.

13
14 2.12 Ms. Elisoff reviewed the case files for the children and noted that there was no casework
15 documentation made by Appellant regarding visits to the children or of any safety and home health
16 reviews.

17
18 2.13 Janet Duris, Area Administrator, scheduled an administrative hearing to meet with
19 Appellant on August 4, regarding the allegations. Appellant did not appear. After reviewing the
20 PCR, a written statement from the foster parent of Andrea and Clinton, and the children's files, Ms.
21 Duris made a determination of misconduct and forwarded her findings to the appointing authority.

1 2.14 Appellant admits that he failed to make the required home visits to the foster children in the
2 foster home, failed to complete safety and health reviews, and failed to meet with the children's
3 foster parent.

4
5 2.15 Dr. Jacob Romo was Appellant's appointing authority. In determining the level of
6 discipline, he reviewed Appellant's work history, his prior suspension and letters of reprimand, and
7 the results of the PCR investigation. Dr. Romo weighed Appellant's failure to perform mandatory
8 face-to-face visits with the foster children and their foster mother against the division's fundamental
9 mission to provide for the safety and health of children. Dr. Romo also weighed Appellant's
10 knowledge of the agency's policies and procedures, the extensive training he had received, and his
11 work history with DSHS. Dr. Romo reviewed Appellant's prior suspension and reprimands which
12 resulted from Appellant's failure to adequately perform the duties of his position and which
13 ultimately put children on his caseload at risk.

14
15 2.16 Dr. Romo determined that Appellant's failure to perform his duties not only created a risk
16 for the children he was responsible for protecting but also created a liability for the agency. Dr.
17 Romo concluded that Appellant's misconduct was serious, undermined the agency's ability to
18 perform its mission and warranted a serious penalty. However, Dr. Romo noted that Appellant had
19 the ability, training and experience to perform the duties of his position of a social worker and he
20 believed that termination was too severe. Dr. Romo determined that a demotion to a Social Worker
21 I position would put Appellant on notice that his performance was unsatisfactory and needed to be
22 improved.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that it met its burden of proving that Appellant failed to conduct home visits, complete home and safety reviews and maintain contact with the foster parent of Andrea and Clinton. Respondent argues that Appellant had a duty to provide intensive social work to Native American children by providing care services to meet their needs. Respondent argues that Appellant's failure to adequately manage his caseload showed that Appellant neglected his duty, was inefficient, insubordinate and that he willfully violated agency policies and procedures. Respondent further argues that Appellant's failure to adequately perform the duties of his position rises to the level of gross misconduct because it interfered with the agency's fundamental mission to protect the well-being of children. Respondent argues that although Appellant had the experience and skills necessary to perform the duties of his position, he lacked the diligence, discipline and motivation to do his job. Respondent argues that demotion is not too severe.

3.2 Appellant does not deny that he did not conduct the required visits. However, Appellant asserts that the disciplinary action was not taken in an equitable or timely fashion and that his supervisor was inadequately trained, failed to provide him with adequate supervision and failed to regularly evaluate his performance. Appellant argues that his demotion was unfair.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible

1 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
2 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
3 Corrections, PAB No. D82-084 (1983).

4
5 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
6 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
7 of Social & Health Services, PAB No. D86-119 (1987).

8
9 4.5 Inefficiency is the utilization of time and resources in an unproductive manner, the
10 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of
11 effective operations as measured by a comparison of production with use of resources, using some
12 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*
13 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

14
15 4.6 Insubordination is the refusal to comply with a lawful order or directive given by a superior
16 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
17 Dep't of Social & Health Services, PAB No. D94-025 (1995).

18
19 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
20 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

21
22 4.8 Willful violation of published employing agency or institution or Personnel Resources
23 Board rules or regulations is established by facts showing the existence and publication of the rules

1 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
2 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

3
4 4.9 Although it is not appropriate to initiate discipline based on prior formal and informal
5 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
6 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
7 D93-163 (1995).

8
9 4.10 Appellant was aware of the performance expectations of his position and he was clearly
10 aware of his responsibility to conduct on-site foster placement visits at least every 90 days, to make
11 home and safety reviews, and to provide casework to assist the foster parents in the care of the
12 children. Respondent has proven that Appellant neglected his duty, was inefficient and willfully
13 violated agency policy and procedures. Appellant failed to comply with a lawful directive from Ms.
14 Duris to conduct face-to-face visits with all children in their foster homes at least once every 90
15 days. Appellant's failure to do so constitutes insubordination. Furthermore, Appellant's failure to
16 conduct face-to-face home visits with the children and their foster parent interfered with the
17 agency's ability to ensure the safety and health of children under its care and rises to the level of
18 gross misconduct.

19
20 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to
21 the facts and circumstances, including the seriousness and circumstances of the offenses. The
22 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
23 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
24 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1
2 4.12 Appellant was in a highly professional position, he had extensive experience in performing
3 the duties of a social worker and as such must be held to a higher standard of conduct and
4 accountability. Additionally, Appellant had received extensive corrective and disciplinary action
5 and was on notice that further misconduct could lead to further disciplinary action. Respondent has
6 proven that under the undisputed facts and circumstances of this case, demotion is the appropriate
7 sanction and the appeal should be denied.

8
9 **V. ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Ben Bearchum Jr. is denied.

11
12 DATED this _____ day of _____, 2000.

13
14 WASHINGTON STATE PERSONNEL APPEALS BOARD

15
16 _____
17 Walter T. Hubbard, Chair

18
19 _____
20 Gerald L. Morgen, Vice Chair